

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MICHAEL NELSON,

Plaintiff,

v.

FOSTER POULTRY FARMS, et al.,

Defendants.

No. 1:21-cv-00222 JLT BAM

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS

(Doc. 21)

Michael Nelson is a former employee of the defendants. He filed a complaint in Merced County Superior Court seeking to hold the companies liable for claims related to disparate treatment, discrimination, and wrongful termination. (*See generally* Doc. 1 at 18-46.) Plaintiff requests the Court remand the matter to the state court. (Doc. 8.) In addition, Plaintiff requested dismissal of his seventh and eighth causes of action related to oral agreements “not to terminate employment without good cause.” (*Id.* at 24-25.)

The matter was referred to the assigned magistrate judge, who issued Findings and Recommendations on March 31, 2022. (Doc. 21.) The magistrate judge noted it was undisputed that at the time of termination, Plaintiff “was a member of a labor union, and a collective bargaining agreement governed the terms of his employment.” (*Id.* at 5.) The magistrate judge found Plaintiff’s breach of contract claims were preempted by Section 301 of the Labor Management Rights Act, and Defendants’ removal was proper. (*Id.* at 5-6.) In addition, the

1 magistrate judge observed that Rule 41(a) was “not the proper mechanism for a plaintiff to  
2 dismiss some but not all claims against a particular defendant.” (Doc. 21 at 7.) Instead, the  
3 magistrate judge noted such a request should be made under Rule 15(a). (*Id.*, citing, *Gen. Signal*  
4 *Corp v. MCI Telecomms. Corp.*, 66 F.3d 1500, 1513 (9th Cir. 1995).) Therefore, the magistrate  
5 judge recommended: (1) dismissal of the seventh and eight causes of action be denied and (2) the  
6 motion to remand be denied. (*Id.* at 8.)

7 The Court served the Findings and Recommendations on the parties, which contained  
8 notice that any objections were to be filed within 14 days after service. (Doc. 21 at 8.) The Court  
9 advised the parties that “failure to file objections within the specified time may result in the  
10 waiver of the ‘right to challenge the magistrate’s factual findings’ on appeal.” (*Id.*, quoting  
11 *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).) No objections were filed, and the time  
12 in which to do so has passed.

13 According to 28 U.S.C. § 636 (b)(1)(c), this Court conducted a *de novo* review of the case.  
14 Having carefully reviewed the entire matter, the Court concludes that the Findings and  
15 Recommendations are supported by the record and proper analysis. Thus, the Court **ORDERS**:

- 16 1. The Findings and Recommendations issued on March 31, 2022 (Doc. 21) are  
17 **ADOPTED** in full.
- 18 2. Plaintiff’s motion to remand (Doc. 8) is **DENIED**.
- 19 3. Plaintiff’s request for voluntary dismissal of his seventh and eighth causes of  
20 action pursuant to Federal Rule of Civil Procedure 41(a) is **DENIED**.
- 21 4. The matter is referred to the assigned magistrate judge for further proceedings.

22  
23 IT IS SO ORDERED.

24 Dated: **April 18, 2022**

  
UNITED STATES DISTRICT JUDGE